

MARINE SPILL RESPONSE CORPORATION
SERVICE AGREEMENT

STANDARD FORM OF SERVICE AGREEMENT

amended and restated as of September 27, 1996

between

the COMPANY

and

MARINE SPILL RESPONSE CORPORATION

a Tennessee nonprofit corporation

**MARINE SPILL RESPONSE CORPORATION
SERVICE AGREEMENT**

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LIST OF SCHEDULES

Schedule	Description (Date of Last Revision)
Schedule 1	Defined Terms (9/27/96)
Schedule 2	Financial Responsibility (3/21/97)
Schedule 3	Resources and Rates (Parts I & II - (9/27/96), Part III - 1/1/97)
Schedule 4	Acceptable Responder Immunity States (8/15/97)
Schedule 5	Form of Contractor Indemnification Agreement (Schedule 5 - 9/27/96; Schedule 5A - 7/1/97)
Schedule 6	List of MSRC Integral Subcontractor Service Categories and Indemnified Integral Subcontractors (11/28/94)
Schedule 7	MSRC Insurance Coverage (7/29/96)
Schedule 8	List of P&I Clubs (11/28/94)
Schedule 9	Arbitration Provisions (9/27/96)

July 1, 1997

**MARINE SPILL RESPONSE
CORPORATION
SERVICE AGREEMENT**

**STANDARD FORM OF
AGREEMENT**

Parties and Background

This is a **SERVICE AGREEMENT** with attached signature pages (the "Agreement") between the **COMPANY** and **MARINE SPILL RESPONSE CORPORATION**, a nonprofit corporation organized under the laws of Tennessee ("MSRC").

For convenience and simplicity, as between the **COMPANY** and Covered Entity (if any), references to the party for performance are made to a "Covered Entity," but the **COMPANY** can exercise the rights and will guarantee the performance of a Covered Entity as set forth more fully in this Agreement.

In consideration of the promises and the mutual covenants of this Agreement, **MSRC** and the **COMPANY** agree as follows:

Articles

ARTICLE I CALLOUT

1.01. Call-Out of Resources

1.01(a). Alert. A Covered Entity may alert **MSRC** of the possibility of a call-out under this Agreement. Upon receipt of an alert **MSRC** will review its readiness to respond in the event of a call-out under Section 1.01(b). Such alert does not (i) obligate the Covered Entity to pay **MSRC's** rates or any costs incurred by **MSRC**, (ii) obligate **MSRC** to Mobilize any Resources, or (iii) give the Covered Entity any rights to obtain any particular Resources, unless and until **MSRC** is called out in accordance with this Agreement.

1.01(b). Call Out Process. An Authorized Representative, or an individual **MSRC** reasonably believes is acting on behalf of a Covered Entity, may obtain and

MSRC will provide any of the Resources available under this Agreement by calling an **MSRC** response manager through one of the telephone call-out numbers provided by **MSRC** from time to time by notice to the **COMPANY**. This Initial Callout Notice shall consist of a specific request for desired Resources to be provided from the list on Schedule 3 (or as otherwise made available by **MSRC** at the time of callout), in consultation with one of **MSRC's** response managers. The Authorized Representative or the Incident Commander of a Covered Entity may add to or discontinue use of any Resources, in consultation with **MSRC's** response manager, at any time. The Covered Entity and **MSRC** will document the Resources requested and provided. If **MSRC** Subcontractors are required to provide the requested Resources, **MSRC** will call out and supervise those **MSRC** Subcontractors, unless and until other arrangements are made as described in Section 3.04. Part II of Schedule 3 contains the special terms and conditions and call out procedures for **MSRC** support for transfer operations requiring "Average Most Probable Discharge" response capability under OPA.

1.02. Response to Non-Covered Vessels and Facilities and Other Sources. If **MSRC** is called to respond to a Vessel or Facility or other source of a Discharge for which the **COMPANY** has not demonstrated financial responsibility in accordance with Schedule 2 (including a Vessel or Facility for which **MSRC** is not cited in OPA Response Plans as a spill response contractor), the **COMPANY** must promptly furnish evidence of financial responsibility under Schedule 2 for that Vessel or Facility or source of Discharge.

1.03. Mobilizing MSRC Response Resources. As soon as practicable under the circumstances after **MSRC** receives an Initial Call-Out Notice or subsequent change to a request, **MSRC** will Mobilize the requested Resources including **MSRC** Subcontractors.

ARTICLE II. CAPABILITIES

2.01. Resource Availability. Except as otherwise directed by governmental

authorities, agreed by mutual consent or as described below, Resources are provided to the **COMPANY** and others on a first-come/first-served basis. Any of the Resources can be requested for any Spill Event, subject to the following restrictions and qualifications, as applicable:

2.01(a). Oil Spill Event outside MSRC's Operational Area. For an Oil Spill Event occurring within U.S. Jurisdictional Waters but outside the Operational Area, **MSRC** will not provide any Resources whose movement is prohibited by law or order of the applicable Governmental Body, or if such movement would invalidate any Response Plan within the Operational Area. In such event, **MSRC** will coordinate with the Covered Entity to seek a waiver of any such prohibition, order or invalidation from the applicable Governmental Body in order to remove this restriction.

2.01(b). Responder Immunity. If at any time Responder Immunity is not available for a Spill Event, **MSRC** may withdraw, or decline to provide, **MSRC** Response Personnel or any Resources requiring such **MSRC** Response Personnel, unless other arrangements acceptable to **MSRC** in its sole discretion are made to offset any additional legal and financial risk that may result.

2.01(c). Discharges of substances other than Oil or Discharges outside U.S. Jurisdictional Waters. **MSRC** may offer from time to time to provide Resources under this Agreement to Spill Events involving substances other than Oil (including Hazardous Substances) or Spill Events outside U.S. Jurisdictional Waters as permitted and in accordance with **MSRC**'s policies and procedures adopted from time to time. Any additional or different terms and conditions applicable to the provision of Resources for such non-Oil and non-U.S. Spill Events will be set forth in an addendum to this Agreement executed by **MSRC** and the **COMPANY** in advance or at the time of callout for the Spill Event.

2.01(d). Conflicting Requests. If the Covered Entity and some other person with whom **MSRC** has a contract both desire the same Resources or otherwise have conflicting requests, **MSRC** will immediately notify and consult with each of the respective incident commanders regarding the conflict. **MSRC** will continue to follow a first-come/first-served approach unless and until it receives timely non-conflicting directions from the incident commanders to redirect Resources or activities. If, after such notice and consultation the conflicting parties still do not agree, **MSRC** will follow the relevant FOSC(s)' non-conflicting directions, if any.

2.02. Changes in Resources Offered. **MSRC** will periodically update Schedule 3 to reflect changes in the Resources offered under this Agreement, and will give prompt notice to the **COMPANY** in advance where practicable of any significant reduction in response capability.

ARTICLE III ROLES AND PROCEDURES FOR RESPONSE PERFORMANCE

3.01 Responsibilities of the COMPANY and Covered Entity

3.01(a) General Management and Overall Direction. Subject to the power and authority of Governmental Bodies, the Covered Entity will provide general management and overall direction and control of all Response Activities under this Agreement. The Covered Entity shall designate an Incident Commander, who shall be in frequent communication with **MSRC** while **MSRC** is providing Resources under this Agreement. The designated Incident Commander will advise **MSRC** in writing of any non-apparent limitations and restrictions on the authority of the Covered Entity's employees, contractors, and agents to authorize and direct Response Activities of **MSRC** and **MSRC** Subcontractors. The Incident Commander will also advise **MSRC** of any directions or pertinent concerns of Governmental Bodies or the Unified

Command that affect, or that may reasonably be expected to affect, any Resources or activities under this Agreement. All activities of MSRC under this Section 3.01(a) will be subject to the overall direction and control of the Covered Entity.

3.01(b) Care of Resources. The Covered Entity will use its best efforts to operate, maintain, and store any MSRC Response Equipment provided without associated MSRC Response Personnel in a careful and proper manner under the circumstances and in accordance with applicable law.

3.02 Responsibilities of MSRC

3.02(a) Operational Supervision. MSRC will, within the limits of its available resources, at the Covered Entity's cost and expense, and in accordance with applicable law, provide operational supervision and coordination (i) for Resources, including any MSRC Subcontractor called out by MSRC prior to assignment under Section 3.04, and (ii) upon request of the Covered Entity, for any subcontractors called out by or assigned to the Covered Entity. Such supervision shall be in accordance with and subject to the overall direction and control of the Covered Entity's Incident Commander, as described in Section 3.01(a).

3.02(b) Initial Coordination and Communication. MSRC will, upon request, provide an on-scene point of coordination and communication between the Covered Entity and the FOSC and other response officials until the first to occur of: (i) 24 hours after initial callout; or (ii) the Covered Entity's response management team (as contemplated by 33 CFR 155.1035(d)) arrives on-scene and assumes direct management and control.

3.02(c) Governmental Directions. MSRC will immediately notify the Covered Entity's Incident Commander of any directions MSRC receives from any Governmental Body which MSRC believes may conflict with previous guidance or

direction MSRC may have received from the Covered Entity. If the FOSC or SOSC gives directions to MSRC and MSRC does not receive timely directions from the Incident Commander, MSRC will follow those FOSC or SOSC directions. In any event, MSRC will immediately act on directions from any Governmental Body that relate to personnel safety, alleged violations of law or regulations, immediate endangerment of public health or the environment, or directions that constitute an order or command of a Governmental Body with apparent legal authority. MSRC will notify the Incident Commander of those directions and immediate actions as soon as practicable under the circumstances.

3.03. Response Methods. The Covered Entity will use its best efforts to direct Response Activities, and MSRC will provide Resources, in a manner that will (i) comply with all applicable law and (ii) maintain the applicable Responder Immunity of MSRC and MSRC Integral Subcontractors. Subject to the provisions of Section 3.02(c), MSRC will commit only those resources as are reasonably necessary to carry out the Response Activities or response objectives that MSRC has been directed or authorized by the Covered Entity, an Authorized Representative, or Incident Commander to carry out, unless a specific resource(s) is requested by any one of the above-named entity or Persons.

3.04 Covered Entity Directions. When MSRC follows directions pursuant to the procedures of Section 3.02, those directions will be deemed to have been provided by the Covered Entity unless and until further or alternative directions are provided in accordance with the terms of this Agreement by the Covered Entity, its Authorized Representative, or Incident Commander.

3.05 Subcontractors. MSRC will retain MSRC Subcontractors under terms and conditions agreeable to the MSRC Subcontractors and MSRC. MSRC will provide to a Covered Entity, on request, a

copy of **MSRC's** contract with any **MSRC** Subcontractor (except for **MSRC** Integral Subcontractors). Upon request by a Covered Entity and consent of the **MSRC** Subcontractor, **MSRC** will assign the rights and obligations of **MSRC** under the subcontractor contract with respect to that Spill Event to the Covered Entity (except for **MSRC** Integral Subcontractors whose contracts are not assignable). Unless the Covered Entity directs otherwise, **MSRC** generally will provide, at the Covered Entity's expense in accordance with Schedule 3, support services necessary to sustain and support ongoing response operations of **MSRC** and **MSRC** Subcontractors, including food service, lodging, local transportation, safety and medical support, and other support for personnel, and fuel, docking, garage, hangar and similar support services for vessels, aircraft, and vehicles. However, the Covered Entity must provide such support services if the response occurs outside **MSRC's** Operational Area and **MSRC** does not have preexisting arrangements for such support services.

3.06 Safety

3.06(a) MSRC and its Subcontractors. **MSRC** will observe and require its employees and **MSRC** Subcontractors to observe relevant safety laws and regulations and applicable **MSRC** safety policies and procedures. While on a Covered Entity's facilities or vessels, **MSRC** will comply and require its employees and **MSRC** Subcontractors to comply with the Covered Entity's specific instructions concerning safety policies and procedures provided to them by the Covered Entity. **MSRC** will report and require its employees and **MSRC** Subcontractors to report to the Covered Entity as promptly as practicable any accidents associated with the Resources resulting in or that reasonably could have resulted in serious personal injury, death, or material property damage or loss. At the completion of the applicable Response Activities by **MSRC** but in any event within the time required by law, **MSRC** will provide to the Covered Entity all

Occupational Safety and Health Act (OSHA) injury and illness reports involving **MSRC** employees provided under this Agreement.

3.06(b) Covered Entity and its subcontractors. The Covered Entity will observe and require its employees and subcontractors to observe relevant safety laws and regulations and applicable Covered Entity safety policies and procedures. While on **MSRC's** facilities or vessels, the Covered Entity will comply and require its employees and contractors to comply with **MSRC's** specific instructions concerning safety policies and procedures provided to them by **MSRC**. The Covered Entity will report and require its employees and subcontractors to report to **MSRC** as promptly as practicable any accidents associated with the Resources resulting in or that reasonably could have resulted in serious personal injury, death, or material property damage or loss. At the completion of the Response Activities by **MSRC** but in any event within the time required by law, the Covered Entity will provide to **MSRC** all OSHA injury or illness reports relating to the employees of the Covered Entity suffering injury or illness while on **MSRC's** facilities or vessels.

3.06(c) Reasonable Interpretation. The obligations of **MSRC** and Covered Entity under this Section 3.06 are not intended to hold the parties to a standard that would be unreasonable under the actual conditions of a particular Discharge or threat of Discharge and the inherent difficulties and danger of emergency response. All **MSRC** and Covered Entity actions carried out consistently with the directions of the FOSC or SOSC, or with approval of applicable safety officials, will be deemed to be in compliance with this Section 3.06.

3. 07. Recovered Product or Waste.

3.07(a) Definitions. For purposes of this section:

(i) "Management" means generation, recovery, transportation, storage, treatment,

handling, disposal, disposition, possession, control, operation, ownership, importation, or exportation.

(ii) "Recovered Product or Waste" means contained or recovered Oil, oily waste, Hazardous Substances, or mixtures thereof, including contaminated properties.

(iii) "Charges" means license fees, import or export duties, tariffs, taxes, tipping fees or other costs or charges imposed by any Governmental Body with respect to Recovered Product or Waste.

3.07(b) Allocation of Responsibility.

As between MSRC and the Covered Entity, the Covered Entity bears all risk, liability, and responsibility for and will perform or otherwise satisfy all duties and obligations and pay all Charges associated with the Management of Recovered Product or Waste.

3.07(c) Covered Entity's Responsibilities. The Covered Entity will promptly provide to MSRC:

(i) the necessary documentation for MSRC to deliver Recovered Product or Waste for transportation by others to the selected facilities;

(ii) appropriate instructions (orally and promptly confirmed in writing) for the Management of Recovered Product or Waste;

(iii) access to facilities, vessels or other receptacles for receipt or disposal of Recovered Product or Waste.

3.07(d) MSRC Actions. If the Covered Entity fails to meet any of its obligations in (a) or (b) within a reasonable time after request by MSRC, MSRC can:

(i) discontinue operations that depend on the Covered Entity's actions; or

(ii) make the appropriate arrangements for Management of Recovered Product or Waste in the name, on behalf, and at the sole cost and expense of, the Covered Entity.

3.08. Information Coordination and Control.

Except as provided below or as otherwise directed or permitted by the Covered Entity, MSRC will maintain as confidential all information that (i) MSRC obtains from any Covered Entity, MSRC Subcontractor or other subcontractor participating in the Spill Event on behalf of the Covered Entity and (ii) the Covered Entity reasonably designates as confidential. MSRC will coordinate all media and public responses by MSRC with the Covered Entity, in advance of the responses if feasible. The Covered Entity may provide MSRC with a Public Information Plan ("PIP") that identifies the Covered Entity's specific processes, policies, and guidelines with respect to interaction with the public and the media, which the Covered Entity may amend or supplement from time to time. MSRC will follow those policies and guidelines and may reference that guidance in responding to any media inquiries. If the Covered Entity has not provided MSRC with a PIP, MSRC will handle inquiries using its judgment considering MSRC's view of the overall best interests of the Covered Entity, restricting its remarks to factual information about the activities of MSRC and MSRC Subcontractors. In any event, MSRC's officers also may respond to unsolicited inquiries by giving factual information about the activities of MSRC and MSRC Subcontractors, but will avoid speculation or expression of opinion about the Spill Event or the conduct of the Covered Entity in response to the Spill Event.

ARTICLE IV. LIMITS ON WHAT IS OFFERED

4.01. Excluded Services. MSRC's services do not include: (1) Disposal of waste, including recovered Oil, oily waste, and any Hazardous Substances; (2) Source control; (3) Wreck removal; (4) Natural resource damage assessment; (5) Third-party damage claims evaluation or adjustment; (6) Acting as Incident Commander for the Covered Entity; (7) Development or preparation of Response Plans; or (8)

shoreline remediation performed in conjunction with the Natural Resource Trustees to restore the shoreline to its pre-spill condition, rather than as part of the cleaning process carried out under the oversight of the FOSC. However, if MSRC becomes involved in any of these activities, these activities will be governed by the terms and conditions of this Agreement.

4.02. Limits on Use by Covered Entity. The Resources provided under this Agreement will be used only for the Spill Event or exercise for which they were requested.

4.03. Personnel with Equipment. The Covered Entity may obtain the requested MSRC Response Equipment with or without MSRC Response Personnel, at the option of the Covered Entity. However, if MSRC reasonably believes, under the circumstances of a given event or request, that MSRC Response Personnel are required to ensure proper care, operation, and maintenance of certain MSRC Response Equipment as indicated in Schedule 3, MSRC may require that the MSRC Response Equipment be obtained only with the appropriate MSRC Response Personnel.

4.04. Acknowledgment of Representations and Conditions. The Initial Call-Out Notice will constitute an acknowledgment to MSRC that:

4.04(a). Representations and Warranties True and Correct. To the best actual knowledge of the COMPANY, each of the representations and warranties of the COMPANY set forth in Section 8.01 is true and correct in all material respects at the time of the Initial Call-Out Notice.

4.04(b). Conditions to Response Satisfied. The Covered Entity has made a good faith determination (based on the information reasonably available to the Covered Entity at the time) that the Spill Event meets or will meet each of the applicable restrictions or qualifications under Article II relating to the requested Resources,

and the following criteria:

- (i) No Event of Default exists at the time of the Initial Call-Out Notice;
- (ii) For response in U.S. Jurisdictional Waters to a Discharge or threat of Discharge that equals or exceeds 1200 barrels, the FOSC is either Directing or monitoring the Response Activities at the Discharge or threat of Discharge where the Resources are to be deployed; and
- (iii) The Covered Entity will be able to take, on a timely basis, all actions required in Article VII.

ARTICLE V. TERMINATION or SUSPENSION OF RESOURCES

5. 01. Suspension of MSRC's Obligation to Provide Resources.

MSRC may suspend its obligation to provide Resources in whole or in part under this Agreement for a Spill Event upon written notice to the Covered Entity if and to the extent MSRC reasonably determines such suspension is necessary to protect MSRC's material interests as a result of the occurrence and continuation of any of the following:

- (a) a Covered Entity instructs MSRC to act under this Agreement in a manner which would be illegal, unsafe, or in violation of or breach this Agreement in any material respect,
- (b) a Force Majeure Event,
- (c) the unavailability of Responder Immunity,
- (d) the unavailability of subcontractors essential to enable MSRC to provide requested Resources, or
- (e) the existence of other similar circumstances beyond MSRC's reasonable control that materially adversely affect MSRC's ability to perform as contemplated under this Agreement and that MSRC is unable with reasonable diligence to timely

resolve or overcome.

MSRC's suspension under this Section 5.01 of its obligation to provide specific Resources will not affect MSRC's obligation to provide any other Resources. To the maximum extent practicable, except as otherwise provided in Section 11.01, MSRC will provide the notice of suspension at least three (3) days' prior to the effective date of such suspension.

5.02. Return of Resources. The Covered Entity will return all Resources upon completion of the response or earlier as required under this Agreement (i.e., upon an Event of Default or other termination). If the Covered Entity does not return any Resource when required, MSRC may demand and take immediate lawful possession of the Resource by any lawful means, wherever it may be found, even if it is not in the Covered Entity's possession.

ARTICLE VI. RESPONSE PREPARATION

6.01. Readiness and Response Certification

MSRC's Oil Spill Removal Organization ("OSRO") Classification RRI lists MSRC Response Personnel and MSRC Response Equipment that are available as Resources. MSRC has obtained and will maintain contractor USCG classification as a Class B, C, D, and E OSRO for Rivers/ Canals Environments, Inland Environments, and Oceans Environments (as defined by the USCG at the time of execution of this Agreement) for the capabilities described in its OSRO Classification RRI throughout the Operational Area. MSRC's OSRO Classification RRI is available from MSRC upon request. Upon the Covered Entity's request, MSRC also will arrange, as set forth in and in accordance with the requirements of Part II of Schedule 3, for Resources on a standby basis to provide the coverage required under OPA for "Average Most Probable Discharge."

6.02. Exercises and Response Plan Development by Covered Entity.

6.02(a). Exercises. If Resources are available, a Covered Entity may obtain MSRC's participation in exercises in accordance with the payment terms in Part III of Schedule 3.

6.02(b). Response Plan Development. Each Covered Entity will have the sole responsibility for the content, accuracy, and adequacy of its Response Plans. A Covered Entity may name MSRC in any Response Plan as a contracted resource in MSRC's Operational Area for a Covered Facility or Covered Vessel (named in the most current list provided under Section 6.03) only for those capabilities under Section 6.01 and only for an Oil Spill Event under the conditions described in Section 2.01, as applicable.

MSRC may not be named, without MSRC's prior written consent, as a primary response contractor for any location outside the Operational Area, or as a "non-cascadable resource" in any location (meaning where MSRC Response Equipment would be restricted as to location rather than available for cascading to other locations).

MSRC may notify applicable Governmental Bodies periodically of the (i) names of the Covered Entities entitled to name MSRC in their Response Plans, and (ii) the capabilities available under this Agreement for which MSRC may be cited and the terms, conditions, and limitations of this Agreement. MSRC will provide a copy of any notice to a Governmental Body promptly to the COMPANY.

MSRC will not give advice on or approve the adequacy of any Response Plans. MSRC will provide, at the Covered Entity's request, information about the Resources to assist the Covered Entity in citing MSRC capabilities in its Response Plans. The Covered Entity is required to provide MSRC with a copy of each State Response Plan filed

by the Covered Entity with any Governmental Body which requires, as indicated in Schedule 4, by law or regulation that response contractors act consistently with Response Plans as a matter of law or as a condition to Responder Immunity. MSRC has no obligation to review any Response Plan, and MSRC is not responsible for any descriptions of MSRC that do not conform to the requirements of this Agreement.

6.03. Operations and Authorized Representative. Upon the COMPANY's execution of this Agreement and from time to time afterwards, the COMPANY will provide MSRC with an accurate list of all Covered Entities and their addresses, and all Covered Facilities and Covered Vessels of each Covered Entity that intend to identify Resources in their Response Plans. Upon the COMPANY's execution of this Agreement and from time to time afterwards, each Covered Entity also will provide MSRC with a current list of Authorized Representatives for that Covered Entity, their addresses, and telephone and telecopy numbers. MSRC may periodically provide to the COMPANY MSRC's current list of Covered Entities, Covered Facilities and Covered Vessels, and Authorized Representatives, which the COMPANY will review, correct, and return promptly to MSRC.

ARTICLE VII. COMPENSATION AND PAYMENT

7.01. Compensation and Payment. The Covered Entity will pay MSRC for Resources provided under this Agreement in accordance with the rates and terms in Part III of Schedule 3, as amended from time to time by MSRC upon sixty (60) days' prior written notice to the COMPANY, and as provided in this Section 7.01.

7.01(a) Invoicing. MSRC will invoice the Covered Entity at the address provided by the Covered Entity for Resources provided under this Agreement periodically as appropriate under the circumstances. In

addition, MSRC will provide to the Covered Entity periodically MSRC's good faith estimate of the total costs (including demobilization costs) of Resources being provided for a Spill Event under this Agreement.

7.01(b) Invoice Disputes. The Covered Entity will notify MSRC promptly and in reasonable detail of any objection by the Covered Entity to any item or statement on an invoice or the sufficiency of any supporting documentation. Any disputes that cannot be resolved by mutual agreement will be resolved by arbitration pursuant to Article X. The Covered Entity may withhold payment of any amount reasonably disputed by the Covered Entity, subject to MSRC's rights under Section 7.01(c) below to require payment security. The payment of any invoiced amounts will not prejudice the Covered Entity's right, within one year following the date of invoice, to object to or question any invoiced amount. Any disputed amount shall accrue interest at the rate specified in Part III of Schedule 3 from the due date until paid to MSRC or refunded to the Covered Entity. If a dispute is resolved in favor of MSRC and the Covered Entity has withheld payment of the disputed amount, the Covered Entity will promptly pay to MSRC the disputed amount plus interest. If a dispute is resolved in favor of the Covered Entity and the Covered Entity has previously paid the disputed amount to MSRC, MSRC will promptly refund to the Covered Entity the disputed amount plus interest.

7.01(c) Payment. The Covered Entity will pay invoiced amounts by wire transfer of immediately available funds to an account designated by MSRC within ten (10) Business Days after presentment of the invoice. If at any time MSRC reasonably believes that it is at risk of not receiving payment in the amount and within the time required by this Agreement, MSRC may require the Covered Entity to provide a cash deposit, a parent guaranty or insurance letter of undertaking, or other form of payment security reasonably acceptable to MSRC in

an amount equal to all invoiced amounts due but unpaid plus MSRC's good faith estimate of the total cost of Resources for the following fourteen (14) days of Response Activities, including demobilization costs, as a condition to MSRC providing or continuing to provide Resources.

7.02. Return of MSRC Response Equipment. The Covered Entity will arrange and pay for cleaning, repairing, and replacing, as necessary, all MSRC Response Equipment provided under this Agreement so that the equipment is free of Oil and Hazardous Substances and in as good a condition, operating order, and repair as when initially provided by MSRC, except for ordinary wear and tear. If practicable, the Covered Entity will arrange for the cleaning of the MSRC Response Equipment within the Response Area. MSRC may clean and repair or replace the MSRC Response Equipment at the Covered Entity's expense if the Covered Entity fails to timely perform its obligations under this Section 7.02 or upon agreement between the Covered Entity and MSRC in other circumstances as appropriate.

7.03 Audit. The Covered Entity, or any firm of auditors designated by the Covered Entity, will have reasonable access to and the right to reproduce the Records necessary to verify the accuracy of MSRC's invoices, at times and under circumstances mutually acceptable to the Covered Entity and MSRC and at the Covered Entity's expense.

ARTICLE VIII. REPRESENTATIONS, WARRANTIES, AND GENERAL TERMS AND CONDITIONS

8.01. Representations and Warranties. The COMPANY and MSRC each agree to give the other party written notice promptly if that party obtains actual knowledge that any representation or warranty made by that party in this Article VIII proves to be untrue or incorrect in any material respect. The COMPANY and MSRC each hereby represents and warrants

about itself to the other at all times during the term of this Agreement as follows:

8. 01(a). Validity and Enforceability. This Agreement has been duly executed and delivered by and to the COMPANY and MSRC, respectively, and constitutes a valid and binding obligation of the COMPANY and MSRC, respectively, enforceable against each in accordance with the Agreement's terms except as limited by applicable bankruptcy, insolvency, liquidation, rehabilitation, reorganization, or similar laws of general application relating to or affecting the rights and remedies of creditors or by general equitable principles.

8. 01(b). Capacity and Authority. Each of the COMPANY and MSRC, respectively, has full capacity and authority under law to contract with the other and to perform its respective obligations under this Agreement.

8. 01(c). No Restrictions. The execution, delivery, and, to the best of the actual knowledge of the executive officers of the COMPANY, performance by the COMPANY of its obligations and the consummation by the COMPANY of the Agreement's transactions will not violate any provision of any COMPANY charter or organizational documents and will not violate any statute, law, or regulation of any jurisdiction existing as of this date where that violation would have a material adverse effect on the ability of the COMPANY to fulfill its obligations under this Agreement.

The execution, delivery, and, to the best of the actual knowledge of the executive officers of MSRC, performance by MSRC of its obligations and the consummation by MSRC of the Agreement's transactions will not violate any provision of any charter or organizational documents of MSRC and will not violate any statute, law, or regulation of any jurisdiction existing as of this date where that violation would have a material adverse effect on the ability of MSRC to fulfill its obligations under this Agreement.

8. 01(d). Due Organization. The COMPANY is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was organized. MSRC is a duly organized nonprofit corporation, validly existing and in good standing under the laws of Tennessee, and is duly qualified as a foreign corporation in all jurisdictions where the property owned or business transacted by it makes that qualification necessary.

8. 01(e). Financial Responsibility. The COMPANY is in compliance with all of its obligations under Section 9.05.

8. 01(f). MPA Membership. Either the COMPANY is an MPA Member in good standing or the COMPANY is an affiliate of an MPA Member in good standing entitled to the benefits of membership in MPA pursuant to the MPA By-Laws.

8. 02. Independent Clean-up Operations. The Covered Entity may obtain services, equipment, and personnel to substitute for or supplement the Resources available under this Agreement, at the Covered Entity's sole direction, cost, and expense.

8. 03. MSRC Employees. The Covered Entity may not select, discharge, or, except as required under Sections 3.01(a) and 3.06, control MSRC's employees, servants, or representatives. MSRC will not employ any Person under eighteen (18) years old to perform potentially dangerous Response Activities under this Agreement. Upon the reasonable request of the Covered Entity, MSRC will remove an employee of MSRC or an MSRC Integral Subcontractor from Response Activities under this Agreement. MSRC will implement and maintain a drug and alcohol policy for MSRC in compliance with the law of the jurisdiction where MSRC personnel are stationed permanently. MSRC will provide a copy of its drug and alcohol policy to the COMPANY upon request.

8. 04. Compliance with Certain Executive Orders. To the extent that

there is a final, non-appealable order stating that any Executive Orders relating to Government subcontractors apply to MSRC because of the contractual relationship between MSRC and the COMPANY, MSRC will comply with that final order. MSRC will not discriminate unlawfully in its hiring practices on the basis of race, religion, color, national origin, age, sex, mental or physical handicap, or veteran status.

8. 05. Compliance with the Law for Subcontractors. MSRC will include in its contracts with MSRC Subcontractors a provision requiring those subcontractors to abide by and observe all applicable Federal, state, and local laws, rules, and regulations.

8. 06. Taxes. MSRC will pay all valid taxes and fees owed due to providing MSRC Response Equipment or MSRC Response Personnel under this Agreement. The Covered Entity will reimburse MSRC for any taxes paid by MSRC that are directly attributable to Resources provided under this Agreement. MSRC will cooperate with the directions of the Covered Entity to take all reasonable actions, at the cost and expense of the Covered Entity, to contest any taxes reimbursable by the Covered Entity.

8. 07. Maintenance of Records. MSRC will maintain for three (3) years (or longer as required by law) all Records acquired or produced by MSRC in connection with providing Resources under this Agreement. MSRC will continue to maintain Records beyond that three (3) year period upon the Covered Entity's agreement to pay all costs of doing so.

ARTICLE IX. ALLOCATION OF RISKS

9. 01. Standard of MSRC Performance. The parties agree that the standard governing each of MSRC's obligations under this Agreement will be to use commercially reasonable efforts consistent with applicable spill response industry practices considering available

information and available resources under circumstances, conditions (including weather and sea conditions), and factors existing at any relevant time. **MSRC** will provide Resources requested by a Covered Entity pursuant to this Agreement in a manner that attempts to mitigate, remove, or clean up the applicable Discharge as effectively as practicable under existing circumstances.

Subject only to the first paragraph of this Section and Section 8.01, **MSRC EXPRESSLY DISCLAIMS AND EXCLUDES, AND THE COMPANY ACKNOWLEDGES AND AGREES (ON BEHALF OF ITSELF AND EACH COVERED ENTITY), TO THIS DISCLAIMER AND EXCLUSION AND WAIVES (ON BEHALF OF ITSELF AND EACH COVERED ENTITY), ALL WARRANTIES, STANDARDS, AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY RESOURCES.**

9.02. MSRC Status and Employees.

Notwithstanding the Covered Entity's right to direct Resources under this Agreement, **MSRC** will be and will remain an independent contractor acting under the direction of the Covered Entity at all times during its provision of Resources under this Agreement. The parties do not intend this Agreement to create any other relationship between **MSRC** and the **COMPANY** or any Covered Entity, including that of master/servant, employer/employee, partners, or joint venturers.

9.03. INDEMNIFICATION AND EXCLUSIVE REMEDY.

9.03(a) Nature of Relationship.

MSRC and the **COMPANY** recognize and agree that, in connection with providing the Resources under this Agreement and in furtherance of the express public policy goals underlying OPA and other laws to facilitate

prompt and effective response to Spill Events: (a) **MSRC** is a nonprofit and tax-exempt corporation providing services to promote the welfare of the public; (b) any Resources provided under this Agreement are for the sole benefit of the **COMPANY** or the Covered Entity; (c) the extraordinary and emergency nature of providing Resources may require actions by **MSRC** and **MSRC** Integral Subcontractors that may give rise to a variety of Claims; (d) **MSRC** has based the charges for and availability of the Resources to be provided under this Agreement on the premise that the **COMPANY**, or anyone asserting rights on its behalf, will not challenge **MSRC's** right to be indemnified as provided in this Section 9.03. Accordingly, **MSRC** and the **COMPANY** fully understand and recognize and agree that the nature of the Resources to be provided under the terms set forth in this Agreement make it appropriate, equitable and essential to provide for the allocation of the risks and liabilities, limitation of remedies, and the indemnification of **MSRC** and the **MSRC** Integral Subcontractors as set forth in this Section 9.03.

THE COMPANY EXPRESSLY RECOGNIZES AND ACCEPTS ITS OBLIGATIONS ARISING UNDER SECTION 12.08 FOR INDEMNIFICATION AS SET FORTH IN THIS SECTION 9.03.

9.03(b) COVER

INDEMNIFICATION. SUBJECT TO THE PROVISIONS OF SECTIONS 9.03(d) AND (e) BELOW, IT IS AGREED THAT THE COVERED ENTITY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AND EACH OF THEM, AGAINST AND FROM ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES OF ANY SUCH INDEMNITEES RELATED TO ANY CLAIM ARISING OUT OF, OR IN ANY MANNER CONNECTED WITH, **MSRC'S** PERFORMANCE OF OR ALLEGED FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT AS A RESULT OF A SPILL

EVENT WHERE THE INDEMNITEE DEMONSTRATES THAT THE **COMPANY**, OR ANY APPLICABLE COVERED ENTITY, COULD HAVE BEEN LIABLE IF SUED DIRECTLY OR DID OR DOES HAVE A LIABILITY FOR OR WITH RESPECT TO SUCH CLAIM UNDER OPA OR ANY OTHER APPLICABLE FOREIGN, FEDERAL, STATE OR LOCAL LAW (WHETHER STATUTORY OR COMMON) AND IRRESPECTIVE AS TO WHETHER SUCH LIABILITY WOULD BE CONSIDERED DIRECT, INDIRECT, CONCURRENT, JOINT, PRIMARY, SECONDARY, VICARIOUS OR DERIVATIVE OF THE LIABILITY OF ANY INDEMNITEE WITH RESPECT TO SUCH CLAIM. IF THE COVERED ENTITY PROVIDING AN INITIAL CALL-OUT NOTICE IS NOT THE "RESPONSIBLE PARTY" FOR THE APPLICABLE DISCHARGE AS DEFINED IN OPA, THE LIABILITY OF THE COVERED ENTITY FOR THE PURPOSES OF THIS SECTION 9.03(b) SHALL INCLUDE THE LIABILITY OF SUCH "RESPONSIBLE PARTY".

9.03(c) INDEMNIFIED CLAIMS. UNLESS OTHERWISE SPECIFICALLY EXCLUDED BY SECTION 9.03(d), THE OBLIGATIONS OF THE COVERED ENTITY UNDER SECTION 9.03(b) SHALL INCLUDE, WITHOUT LIMITATION, ANY CLAIM ARISING OUT OF, OR IN ANY MANNER DIRECTLY OR INDIRECTLY CONNECTED WITH, THE FOLLOWING:

- (i) THE PROVISION, MOBILIZATION, DEPLOYMENT OR DEMOBILIZATION OF RESOURCES UNDER THIS AGREEMENT OR THE FAILURE TO PROVIDE, MOBILIZE, DEPLOY OR DEMOBILIZE SUCH RESOURCES;
- (ii) THE PERMANENT OR TEMPORARY TERMINATION OR SUSPENSION OF **MSRC'S** PERFORMANCE OF OR PROVISION OF RESOURCES OR THE TERMINATION OF THIS AGREEMENT BY **MSRC**, PROVIDED THAT SUCH

SUSPENSION OR TERMINATION IS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT;

(iii) THE ASSERTION OF RESPONDER IMMUNITY BY **MSRC** OR ANY OTHER PERSON;

(iv) **THE NEGLIGENCE OF MSRC OR ANY INDEMNITEE, INCLUDING A NEGLIGENT DEFAULT OR BREACH BY MSRC OF ITS OBLIGATIONS UNDER THIS AGREEMENT;**

(v) ANY CLAIM FOR PERSONAL INJURY OR WRONGFUL DEATH OF PERSONS WHO ARE EMPLOYEES OR INVITEES OF THE **COMPANY**, OR ANY COVERED ENTITY, ON THE VESSEL OR FACILITY THAT IS THE SOURCE OF THE SPILL EVENT, OR ANY **MSRC** SUBCONTRACTORS (OTHER THAN **MSRC** INTEGRAL SUBCONTRACTORS) OR OTHER SUBCONTRACTORS OF THE **COMPANY** OR ANY COVERED ENTITY;

(vi) ANY RISKS OR LIABILITIES CONCERNING OR RELATED TO THE TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF RECOVERED OIL, HAZARDOUS SUBSTANCES OR ANY WASTE WHEN COLLECTED, RECOVERED OR GENERATED AS A RESULT OF, OR WHEN USED IN, PROVIDING RESOURCES, OTHER THAN ANY GARBAGE OR REFUSE INCIDENTALLY GENERATED BY **MSRC** IN ITS OWN OPERATIONS; AND

(vii) INFRINGEMENT BY THE **COMPANY** OR BY A COVERED ENTITY (OR **MSRC** THROUGH THE USE OF EQUIPMENT, PROCESSES OR OTHER PROPERTY OWNED OR OPERATED BY OR PROVIDED BY OR ON BEHALF OF THE **COMPANY** OR A COVERED ENTITY BUT EXCLUDING **MSRC'S** OWN EQUIPMENT) OF ANY PATENT, COPYRIGHT, TRADEMARK, OR

SERVICE MARK OR MISAPPROPRIATION OF ANY PROPRIETARY INFORMATION OR TRADE SECRETS.

9.03(d) Excluded Obligations. The obligations of the Covered Entity under Sections 9.03(b) and (c) shall not include and shall not apply to:

(i) the extent (but only to the extent) that applicable law would render such indemnity or hold harmless agreement void or unenforceable;

(ii) the extent that any Claim is caused by any Indemnitee's gross negligence or willful, reckless, or criminal misconduct;

(iii) the portion of any Claim for which an insurer of **MSRC** recognizes or otherwise has an obligation to pay under the applicable policy or cover;

(iv) any portion of a Claim arising from or related to services or equipment provided by **MSRC** to a Spill Event other than pursuant to this Agreement including services or equipment provided by **MSRC** to a Spill Event after the Covered Entity has, pursuant to this Agreement, terminated the services of **MSRC** under this Agreement at such Spill Event;

(v) any Claim for personal injury or wrongful death of Persons who are employees of **MSRC** or **MSRC** Integral Subcontractors;

(vi) any portion of a Claim with respect to a Spill Event where the payment of such portion of the Claim would cause the aggregate of (i) the amount of any payments actually made by or on behalf of the **COMPANY** or the Covered Entity to or on behalf of any Indemnitees under this Agreement or any **MSRC** Subcontractors pursuant to Section 9.03(i) with respect to such Spill Event and (ii) the amount of any payments made by or on behalf of the **COMPANY** or the Covered Entity for removal costs or damages under OPA with

respect to such Spill Event, to exceed the Cap with respect to such Spill Event, whether or not under OPA or any other applicable law or regulation or in any proceeding the Cap can be maintained by the **COMPANY** or the Covered Entity; provided that the restrictions of this Section 9.03(d)(vi) shall not apply to any Claim for which the **COMPANY** or the Covered Entity has previously assumed the defense of such Claim under Section 9.03(e); or

(vii) any portion of a Claim with respect to which an Indemnitee has successfully maintained an immunity from liability under any applicable provision of OPA or other foreign, Federal or state law; provided, however, that the exclusion under this Section 9.03(d)(vii) shall not apply to costs (including attorneys' fees) incurred by the Indemnitee in asserting said immunity.

9.03(e). Procedure for Indemnification with Respect to Third Party Claims. The obligations and liabilities of the **COMPANY** or the Covered Entity with respect to Claims resulting from the assertion of liability by a Person other than an Indemnitee (a "Third Party") against such Indemnitee (for the purposes of this Section 9.03, "Third Party Claims") shall be subject to the following terms and conditions:

(i) The Indemnitee shall be obligated to give prompt (but in no event greater than sixty (60) days) written notice to the Covered Entity (and **MSRC** if the Indemnitee is not **MSRC**) of any Third Party Claim which is subject to the indemnification of the Covered Entity under this Section 9.03, stating the nature and basis of the Claim, and the amount thereof, to the extent known. Within thirty (30) days of the giving of such notice, the Covered Entity shall do one of the following: (a) satisfy the Claim, (b) assume the defense of such Claim by written notice to the Indemnitee (and **MSRC**, if the Indemnitee is not **MSRC**) and by executing a litigation indemnity in form and substance reasonably acceptable to the Indemnitee (including an acknowledgment of the waiver by the Covered Entity of the applicability of

Sections 9.03(d)(vi) and (vii) with respect to such Claim), or (c) request by written notice to the Indemnitee (and **MSRC**, if the Indemnitee is not **MSRC**) that either **MSRC** or the Indemnitee assume the defense of the Claim; provided, however, that the Covered Entity shall not have the right to assume the defense of a Third Party Claim if the Covered Entity does not perform the indemnification obligations under this Section 9.03 or the payment obligations under Section 7.01, and the **COMPANY** shall not have the right to assume the defense of a Third Party Claim in the event of a breach or anticipatory breach by the **COMPANY** of the indemnification obligations under this Section 9.03 or the payment obligations under Section 7.01.

(ii) If the Covered Entity has requested that **MSRC** or the Indemnitee assume the defense of a Third Party Claim, **MSRC** or the Indemnitee, as the case may be, shall be entitled to select its own counsel in connection with such Claim. If the Covered Entity elects to defend any such Claim, the Covered Entity shall make available to **MSRC** all reports or other documents relating to the defense of the Claim and allow **MSRC**, at its cost, to participate in meetings or conversations relating to the defense of the Claim; however, if **MSRC** or the Indemnitee should elect to have its own counsel in connection with monitoring the defense of any such Claim or otherwise to represent the interests of the Indemnitee, particularly with respect to the rights of the Indemnitee to be indemnified by the Covered Entity under this Section 9.03, the costs of such counsel shall be borne by the Indemnitee. If **MSRC** or the Indemnitee assumes the defense of a Third Party Claim, for so long as the **COMPANY** or the Covered Entity has an obligation to indemnify the Indemnitee, **MSRC** or the Indemnitee shall make available to the **COMPANY** or the Covered Entity, as the case may be, all reports or other documents relating to the defense of the Claim and allow the Covered Entity, at its cost, to monitor meetings and conversations relating to the defense of the Claim. If there is more than one Indemnitee, the Indemnitees shall be entitled to have one joint counsel, at their

cost, in connection with such Claim to monitor the defense or otherwise represent the interests of all such Indemnitees, which counsel shall be selected by **MSRC**. If **MSRC** assumes the defense of a Third Party Claim, the Covered Entity shall be obligated to pay the invoiced reasonable fees and expenses of counsel for **MSRC** or the Indemnitee, as the case may be, as such fees and expenses are incurred. Unless otherwise required to protect the right of the Indemnitee to be indemnified by the Covered Entity, the Indemnitee shall be obligated to cooperate fully in any defense to a Claim conducted by the Covered Entity. Any party defending any Claim shall assert any exemption or immunity from liability that may be available, including, without limitation, any Responder Immunity.

(iii) So long as the Covered Entity is defending, the Indemnitee shall not compromise or settle any such Claim without the prior written consent of the Covered Entity, and, if the Indemnitee should object to any compromise or settlement of such a Claim acceptable to the Covered Entity, such Indemnitee shall thereafter assume the costs of defending the Claim and the Covered Entity's obligations with respect to such Claim shall be limited to the compromise or settlement that was acceptable to the Covered Entity. If **MSRC** or the Indemnitee is defending such Claim, the party defending such Claim shall consult with the Covered Entity concerning any compromise or settlement but shall be entitled to compromise or settle such Claim without the prior consent of the Covered Entity, but if the Covered Entity objects to that compromise or settlement, the Covered Entity can assume the defense provided that the Covered Entity secures its obligation to defend and pay such Claim in a manner satisfactory to **MSRC**, and Sections 9.03(d)(vi) and (vii) are no longer applicable to such Claim.

9.03(f). Procedure for Indemnification with Respect to Claims other than Third Party Claims. Any judicial or non-judicial application or proceeding for indemnification

from the **COMPANY** or the Covered Entity under this Section 9.03 for any Indemnitee for a Claim that is not a Third Party Claim can only be commenced, administered or processed by **MSRC**, for the account and benefit of the Indemnitee on whose behalf an application for indemnification under this Section 9.03 was submitted to the Covered Entity by **MSRC**; provided, however, that if **MSRC** is legally or otherwise unable to commence, administer or process such application or proceeding on behalf of an Indemnitee, such Indemnitee may commence and process such proceeding against the Covered Entity directly.

9.03(g). No Waiver. Nothing in this Agreement or this Section 9.03 shall constitute a waiver or limitation of the rights of **MSRC** with respect to Responder Immunity or any other statutory or common law defense to or limitation of liability of the **COMPANY** or Covered Entity resulting therefrom.

9.03(h). MSRC Integral Subcontractors as Indemnitees. Only **MSRC** Integral Subcontractors actually listed by name in Schedule 6, as such Schedule may be amended pursuant to Section 11.05 (but not any subcontractors not so listed by name even if such subcontractors provide services of the type provided by an **MSRC** Integral Subcontractor), are entitled to the benefits provided to Indemnitees pursuant to Sections 9.03(a) through (g).

9.03(i). Indemnity to MSRC Subcontractors. The **COMPANY** hereby irrevocably designates, appoints and authorizes **MSRC** as its agent to execute and deliver an indemnification agreement in the form of Schedule 5 hereto, as **MSRC**, with the concurrence of MPA may elect, on behalf of the **COMPANY** and the Covered Entity to any **MSRC** Subcontractor (other than an **MSRC** Integral Subcontractor). The **MSRC** Subcontractors to which **MSRC** is permitted to extend such indemnification are set forth in Schedule 5A, as such Schedule may be amended by **MSRC** with the concurrence of MPA and which amendment will be effective

immediately upon written notice by **MSRC** to the **COMPANY** .

9.04. Covenant Not to Sue.

9.04(a). Release of Liability. The **COMPANY**, on behalf of itself and each Covered Entity, in recognition of the accommodation and special circumstances of **MSRC** described in Section 9.03(a), hereby irrevocably releases and forever discharges the Indemnitees other than the **MSRC** Integral Subcontractors (those Indemnitees other than **MSRC** Integral Subcontractors are referred to in this Section as the "MSRC Indemnitees") from liability for any and all Claims whatsoever, including but not limited to Claims for contribution, breach of contract, tort, or otherwise, or any Claims arising from the negligence or gross negligence of the **MSRC** Indemnitees, that the **COMPANY** or the Covered Entity currently has or may have against the **MSRC** Indemnitees arising from, related to, or in connection with this Agreement.

9.04(b). Other Claims. The **COMPANY**, on behalf of itself and each Covered Entity, also covenants and agrees that neither the **COMPANY** nor any Covered Entity will (i) file a cross-claim or counter-claim against the **MSRC** Indemnitees or (ii) assert the legal liability of any **MSRC** Indemnitee as a defense in any formal pleadings in any legal proceeding arising from, related to, or in connection with this Agreement or concerning any Claim brought by any Person other than an Indemnitee against the **COMPANY** or the Covered Entity related to a Spill Event. This Section will not be construed in any way to limit, restrain, or prohibit the making of any factual statements by any Person in any pleading, argument, filing, affidavit, deposition, or testimony in any such legal proceeding.

9.04(c). Exceptions. Sections 9.04(a) and 9.04(b) will not preclude the **COMPANY** from pursuing Claims (i) under the arbitration provisions of Article X regarding disputes related to payment for

MSRC's services under this Agreement, (ii) seeking injunctive relief or specific performance or (iii) under the arbitration provisions of Article X arising from the willful, reckless, or criminal misconduct of the MSRC Indemnitees.

9.04(d). Breach. If this Section 9.04 at any time is breached by the **COMPANY** or any Covered Entity (including a breach because an allegation of willful, reckless, or criminal misconduct is not ultimately determined by a final decision or order of the party adjudicating any dispute to have been correct), the **COMPANY** and Covered Entity will be jointly and severally liable for any incidental or consequential damages of an MSRC Indemnitee arising from or related to that breach, including without limitation any and all attorneys' fees and expenses incurred by an MSRC Indemnitee in defending any litigation resulting from that breach. That liability will not be limited in amount by any other provision of this Agreement.

9.04(e). Full Force and Effect. This Section 9.04 will remain in full force and effect notwithstanding the existence of any breach or default by **MSRC** of its obligations under this Agreement, or the expiration or earlier termination of this Agreement.

9.05. Financial Responsibility. The **COMPANY** covenants and agrees to comply with the provisions of Schedule 2.

9.06. Insurance.

9.06(a). MSRC Insurance. **MSRC** will obtain and maintain at its sole cost during the term of this Agreement the insurance coverage described in Schedule 7, as such Schedule may be amended by **MSRC** with the concurrence of MPA and which amendment will be effective immediately upon written notice by **MSRC** to the **COMPANY**.

9.06(b). Subcontractor Insurance. **MSRC** will require in its contracts with all **MSRC** Subcontractors that all those subcontractors provide to **MSRC** evidence

of insurance coverage maintained by each contractor that in the reasonable judgment of **MSRC** is customary in the industry of such subcontractor.

9.06(c). Role of MSRC Insurance.

As set forth in Section 9.03(d)(iii), the recognition of its obligation to pay by an insurer of **MSRC** for any portion of a Claim relieves the Covered Entity of its indemnification obligation under Section 9.03(b) with respect to such portion of the Claim. However, if an Indemnitee does not ultimately receive payment on an indemnified Claim from an insurer of **MSRC**, the Covered Entity will be obligated to pay that Claim in accordance with the terms of this Article IX. After the making of that payment, the Covered Entity will be subrogated to the rights of **MSRC** and the Indemnitee to seek recovery for that portion of the Claim from the insurer. **MSRC** and the Indemnitee will cooperate fully with the Covered Entity in seeking recovery from any such insurer. Any right of the Covered Entity to assume the defense of a Claim from **MSRC** or an Indemnitee pursuant to Section 9.03 will be subject to the rights and duties of an insurer of **MSRC** that has acknowledged coverage for that Claim to participate in or assume the defense of the Claim.

9.07. No Third-Party Beneficiaries.

This Agreement is solely for the benefit of **MSRC** and the **COMPANY**, and no third party will have any interest, Claim, or right to enforce any provision of this Agreement against either **MSRC** or the **COMPANY**, except for the rights of Indemnitees to enforce the Covered Entity's indemnity of those Indemnitees under Section 9.03.

ARTICLE X. ARBITRATION AND DISPUTE RESOLUTION

10.01. Inform and Negotiate.

MSRC and the **COMPANY** will each use its best efforts to inform the other party by written notice promptly following the later of the occurrence or the discovery of any such occurrence of any issue or event that the party

knows has raised a dispute under this Agreement. The **COMPANY** and **MSRC** will try to resolve any disputed matter by negotiation. If the dispute is not resolved to the satisfaction of a party, that party will deliver a written notice of Claim to the other party.

10. 02. Arbitration. If **MSRC** and the **COMPANY** are unable to agree upon a settlement of any matter, the matter will be subject to arbitration in accordance with the provisions of Schedule 9. If the arbitration could not timely achieve a requested injunctive remedy, or if the matter involves an issue where the only remedy under this Agreement is specific performance, either party may commence an action solely for preliminary injunctive relief. Any other dispute or Claim arising out of or relating to this Agreement will be settled exclusively and finally by arbitration. Any decision or award of the arbitral tribunal will be final and binding upon the parties to the arbitration proceeding.

10. 03. Continued Performance. Each party will continue to perform its obligations under this Agreement without deduction, set-off, or any other charges of any nature whatsoever and without prejudice to its position in any pending dispute. Each party will retain its rights to terminate or suspend the provision of Resources under this Agreement.

10. 04. Jurisdiction. Any judicial action or proceeding between the **COMPANY** and **MSRC** directly or indirectly connected with and permitted under this Agreement will be brought in the United States District Court for the Southern District of New York if that court has subject matter jurisdiction, and in all other cases in the Supreme Court of the State of New York, County of New York. The **COMPANY** and **MSRC** each consent to process being served in any manner permitted by law.

10. 05. Enforceable Award. Any award in an arbitration may be enforced against the parties to the arbitration or their

assets, wherever found. Judgment upon an arbitration award may be entered in the United States District Court for the Southern District of New York.

10. 06. Requirements for All Persons. Indemnification under Section 9.03 is contingent on the Indemnitee abiding by the provisions of this Article X.

ARTICLE XI. TERM AND AMENDMENT OF AGREEMENT

11. 01. Full Termination by MSRC.

11. 01(a). Events of Default. If any of the following events occurs and is continuing, it is an "Event of Default":

- (i) Any of the **COMPANY** representations and warranties in Section 8.01 prove to be untrue or incorrect in any material respect;
- (ii) Any **COMPANY** Insolvency Event occurs;
- (iii) The **COMPANY** fails to satisfy any of this Agreement's payment obligations (including the obligations in Article VII) in an aggregate amount in excess of \$100,000, fails to pay any disputed **MSRC** invoices in an aggregate amount **MSRC** reasonably considers to be a problem for the funding of **MSRC**'s operations or readiness, or fails to provide security for payment in accordance with Section 7.01;
- (iv) The **COMPANY** or a Covered Entity engages in a pervasive pattern of illegal or knowingly unsafe practices in directing Response Activities performed or provided under this Agreement; or
- (v) The **COMPANY** breaches its material obligations under this Agreement, other than the obligations under (i), (iii), and (iv) above, and that breach is not cured within thirty (30) days after written notice from **MSRC** specifying that breach.

11. 01(b) MSRC Termination of Resources. Upon an Event of Default MSRC may terminate Resources to the Covered Entity with at least twenty-four (24) hours (or 48 hours if the Event of Default is a failure to pay under Section 11.01(a)(iii)) prior notice to the Covered Entity and, if applicable, the FOSC. MSRC may withdraw all Resources from the Spill Event when the notice period expires. MSRC also may terminate Resources without any notice if any of the COMPANY's representations or warranties in Section 8.01(e) or (f) prove to be materially untrue or incorrect or if it has an Insolvency Event (Section 11.01(a)(ii)).

The Covered Entity must pay MSRC costs incurred after termination only for demobilizing, on a reasonable schedule, MSRC Response Personnel, MSRC Response Equipment, and any (unassigned) MSRC Subcontractor from the Spill Event, and for any cleaning, repair, or maintenance of MSRC Response Equipment required under Section 7.02.

11. 01(c). Reinstatement Option. MSRC may, in its discretion after an Insolvency Event (Section 11.01(a)(ii)) reinstate Resources, upon the Covered Entity's compliance with MSRC's request for payment security under Section 7.01(c).

11. 02. Covered Entity Termination of Resources. The Covered Entity may terminate, in whole or in part at any time, Resources being provided under this Agreement by written notice to MSRC.

11. 03. Term of the Agreement.

11. 03(a). Term. This Agreement is effective on or after October 15, 1996, and it will continue until December 31, 1997, or until the earlier termination pursuant to the provisions of Sections 11.03(b) or 11.03(c). This Agreement will continue automatically for successive periods of three (3) years unless either party gives the other party notice of termination at least ninety (90) days before the date of expiration of the term.

11. 03(b). MSRC Termination of Agreement. If any Event of Default occurs and continues MSRC may, in addition to its right to terminate Resources pursuant to Section 11.01(b) and any other rights and remedies under this Agreement and at law or in equity, terminate this Agreement in its entirety by providing the COMPANY with at least ninety (90) days prior written notice.

MSRC is also entitled to terminate this Agreement upon thirty (30) days notice if

(i) MSRC has liquidated assets to pay Claims against MSRC and therefore cannot provide the contemplated level of Resources, or

(ii) MSRC has not received the required payments at the times required under the Directors and Officers Indemnification Grant and Security Agreement, as amended (dated as of July 16, 1993 by and between MSRC and MPA concerning the indemnification of the executive officers and directors of MSRC); the COMPANY or a COMPANY affiliate has not made the payments at the times required under the Supplemental Dues Call Agreement, as amended (by and between MPA and the COMPANY or a COMPANY affiliate, relating to supplemental dues calls by MPA to support MPA's obligations under the Directors and Officers Indemnification Grant and Security Agreement, as amended); or MSRC has not received the required payments at the times required under the Legal Costs Grant Agreement (dated July 9, 1993 by and between MPA and MSRC, as amended, relating to payment of certain legal defense costs), or

(iii) those agreements described in (ii) above are not in full force and effect and the COMPANY and MPA are not in compliance in any material respect under those agreements.

11. 03(c). COMPANY Termination of Agreement. In addition to the right of the Covered Entity to terminate the provision of Resources pursuant to Section 11.02, the

COMPANY may terminate this Agreement in its entirety, including, as a consequence of such termination, the termination of all Resources then being provided to a Spill Event, at any time by providing **MSRC** with at least sixty (60) days written notice.

11. 03(d). Provisions Surviving Termination. Upon termination of this Agreement, the provisions of Sections 3.05, 3.06, 3.07, 5.02, 8.07, 9.01, 9.03(a)-(h), 9.04, 9.07, 11.04, 12.01, 12.03, 12.04, and Articles VII and X will survive the termination of this Agreement in accordance with its terms. The provisions of Section 9.05 will survive any termination until eighteen months after (A) all Covered Entity-required Article VII payments are made or (B) there is no unsatisfied pending Claim against **MSRC** related to this Agreement (other than Claims arising out of the execution and delivery of this Agreement) remaining outstanding, whichever date is later.

11. 04. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the successors and assigns of this Agreement's parties. Any assignment by the **COMPANY** will be valid only if the assignee satisfies all of the **COMPANY's** obligations under this Agreement existing at the date of the assignment and if the assignee concurrently executes an agreement with **MSRC** assuming all obligations of the **COMPANY** under this Agreement.

11. 05. Modification and Waiver.

11. 05(a). Prior Understandings and Amendment. This Agreement supersedes all previous or contemporaneous agreements, understandings and correspondence between the parties regarding this Agreement's subject matter and, together with all exhibits, schedules, and addenda, constitutes the entire agreement.

This Agreement may be amended during its term by a written instrument approved by **MPA** according to the approval of

amendments under the Grant Agreement (dated July 17, 1991, as amended, between **MSRC** and **MPA**). The **COMPANY** may terminate this Agreement pursuant to Section 11.03(c) if it objects to an amendment of this Agreement pursuant to these procedures.

11. 05(b). Waiver. No benefit or right accruing to either party under this Agreement will be waived unless the written waiver is signed by both parties to this Agreement. A waiver in one instance of any act, condition, or requirement stipulated in this Agreement will not constitute a continuing waiver or a waiver of any other act, condition, or requirement, or a waiver of the same act, condition, or requirement in other instances, unless specifically so stated.

ARTICLE XII. CONTRACT INTERPRETATION

12. 01. Notices. Any notice required or permitted to be delivered under this Agreement is deemed made upon acknowledgment of receipt when sent by United States mail, or facsimile, or when the notice is delivered in person to a party's contact by name, title, address or facsimile as set forth under the signature of the parties (or as expressly provided otherwise in this Agreement). Both the **COMPANY** and **MSRC** may designate additions or changes in contacts in writing as necessary. Oral notice will be sufficient if promptly confirmed in writing.

12. 02. Counterparts and Severability.

12. 02(a). Counterparts as Originals. The parties may execute this Agreement in any number of counterparts, intending each counterpart to serve as an original.

12. 02(b). Enforceability not Impaired. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions will not in any way be affected or

impaired.

12.03. GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING THE CHOICE OF LAW RULES OF THE STATE OF NEW YORK.

12.04. Private Contract. The COMPANY and MSRC agree that this Agreement is a private contract and should not be construed or interpreted to be a public contract or a private contract creating public duties.

12.05. Standard Contract. The terms and conditions of this Agreement are a standard form of agreement. MSRC will provide Resources for Oil Spill Events in U.S. Jurisdictional Waters to:

(i) other MPA Members or their affiliates only under this standard form of agreement, as it may be amended from time to time in accordance with Section 11.05(a), and

(ii) to non-MPA Members, other than the U.S. Government or a state government, only on applicable terms and conditions no more favorable to that non-MPA Member than this Agreement is to the COMPANY, when judging the terms and conditions and this Agreement, each as a whole as opposed to the relative merits of any particular provision.

12.06. Usage. In this Agreement, singular includes the plural and plural includes the singular; "President" means the President of the United States; "day" means a calendar day unless otherwise specified; references to articles, sections, exhibits, or schedules refer to the corresponding part of this Agreement unless otherwise specified; "state" includes any commonwealths, territories, possessions, districts, or other political subdivisions of the United States; references to a statute include all statutory provisions consolidating, amending, or replacing the statute referred to

unless otherwise so stated; "including" means including without limitation and not as a limitation; and "writing" includes printing, typing, facsimile, lithography, and other means of reproducing words in a tangible visible form.

12.07. Definitions and Defined Terms. Capitalized terms used in this Agreement or in any of the Schedules, and not otherwise defined, have the meaning ascribed to them in Schedule 1.

12.08. COMPANY and Covered Entity Obligations and Rights.

12.08(a) Covered Entity Obligations. The COMPANY, as the Corporate Parent of the Covered Entity, unconditionally guarantees the performance of all obligations of the Covered Entity in accordance with this Agreement if the Covered Entity does not perform those obligations. If the Covered Entity does not elect to assume general management and overall direction and control of all Response Activities under this Agreement, the COMPANY will assume those functions. MSRC may enforce this guarantee without first pursuing any remedies for nonperformance against the Covered Entity. Performance by MSRC to a Covered Entity in accordance with this Agreement discharges MSRC's obligations for performance of the same obligations to the COMPANY. Performance by a Covered Entity in accordance with this Agreement discharges the COMPANY's obligations for performance of the same obligations to MSRC. The COMPANY is not entitled to any extension of time for performance or any other concession or rights in addition to those set forth in this Agreement with respect to the performance of the Covered Entity's obligations.

12.08(b) COMPANY Performance of Covered Entity Obligations. The COMPANY undertakes the applicable obligations of the Covered Entity under this Agreement if no Covered Entity is identified under Section 6.03 or no Covered Entity is

involved in the particular use of Resources.

12.08(c) Exercise of Rights. The **COMPANY**, at its election, may exercise any and all rights of the Covered Entity in this Agreement to the extent not already exercised in full by the Covered Entity. In the event of a conflict between the exercise of any rights under this Agreement by the **COMPANY** and the Covered Entity, the exercise by the **COMPANY** controls.

12.08(d) References, Employees and Contractors. If the **COMPANY** is required to perform any obligations or elects to exercise any rights of the Covered Entity, those particular rights and obligations and the corresponding references relating to the Covered Entity or its employees, contractors, facilities or vessels will apply and refer also to the **COMPANY** and its employees, contractors, facilities and vessels.

12.08(e) No Rights to Enforce. A Covered Entity may exercise the rights set forth in regard to the Covered Entity in this Agreement, including the right to assume general management and overall direction and control of all Response Activities under this Agreement, but does not have or obtain any rights to enforce directly by arbitration or legal or administrative proceedings any provisions of this Agreement, including any obligations of **MSRC** under this Agreement. The **COMPANY** retains all rights to enforce this Agreement in accordance with its terms.